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Edward H. Warner

American University Washington College of Law, ew0145a@student.american.edu

Davis Jeffery

University of Maryland - Baltimore County, davisj@umbc.edu

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Reaching Beyond the State

Judicial Independence, the Inter-American Court of Human Rights and Accountability in Guatemala

Jeffrey Davis and Edward H. Warner¹
Department of Political Science
University of Maryland, Baltimore County
1000 Hilltop Circle
Baltimore, Maryland 21250
410.455.2181
davisj@umbc.edu

Abstract

In this paper, we examine the role of the Inter-American Court of Human Rights in its efforts to impose accountability for human rights violations in Latin America. We suggest that because domestic enforcement mechanisms are irreconcilably deficient in this task, accountability must emanate from beyond the state. We test this contention by examining one of the most challenging nations in the region – Guatemala.

¹ Dr. Davis is an Assistant Professor of Political Science at the University of Maryland, Baltimore County. He has published articles on human rights litigation and judicial decision-making. Before pursuing his Ph.D., Dr. Davis practiced law as an Assistant Attorney General for the State of Georgia, as counsel for the Atlanta School Board and as the Legal Aide to the Speaker of the Georgia House of Representatives. He has recently volunteered for two organizations immersed in human rights litigation. Mr. Warner is a graduate student in the Department of Intercultural Communication at the University of Maryland, Baltimore County.

1. *Introduction*

Guatemalan security forces killed an estimated 200,000 people during that country's 30-year internal conflict. Most of those responsible for these crimes remain hidden behind a stubborn wall of impunity. In one episode, on July 18, 1982, Guatemalan military and para-military personnel slaughtered 268 civilians. The massacre took place in Plan de Sanchez and surrounding communities where "soldiers randomly picked their victims, raping and torturing young women before rounding up villagers in a house, throwing in hand grenades and firing machines guns."¹ Most of the 268 victims were Mayan. For more than 20 years Guatemala blocked all attempts to punish those responsible for this massacre.

As nations work to democratize and liberalize after periods of intense conflict, how can they confront this history of brutal human rights atrocities? How can their recurrence be prevented? While traditional Anglo-American democratic theory suggests that an independent judiciary is the institution ideally suited to hold the government accountable to the law, in this essay we will consider whether international courts are necessary to help post-conflict nations confront their past and democratize. By looking at the Inter-American Court of Human Rights (IACHR), we examine whether international courts can effectively promote human rights accountability and protection, and if so to what extent. Human rights scholarship is perhaps at its most revealing when the analysis is coupled with the human story from which the legal and political issues arise.

Therefore, our analysis will orbit around the case studies of the *Mack*, *Carpio* and *Plan de Sanchez* trials from Guatemala.² Guatemala is an ideal subject of analysis for this essay because it is emerging from 30 years of political violence. It has suffered some of

the most horrific human rights violations in the region and it is now struggling to reconcile this past and embrace liberal democracy. It has one of the worst human rights records in Latin America according to observers like Amnesty International and the U.S. State Department, and thus it is a monumentally challenging case.³

To uncover answers to our questions we first provide a brief history of Guatemala. We then consider the role of courts in the struggle for human rights, demonstrating the need for international judicial action. Accompanying this section, we include a discussion of the purpose of international courts. Then after a brief introduction to the Inter-American human rights system and our three case studies, we examine whether and how the IACHR accomplishes the purpose of an international human rights tribunal. Finally, drawing on lessons from the analysis, we conclude that international courts, and specifically the Inter-American Court, can indeed promote human rights. We base analysis on interviews with lawyers and activists working in the area, on our observation of proceedings before the IACHR, and on the content analysis of IACHR decisions.⁴

2. *Historical Background*

Guatemala has a deeply tragic history of political violence and wide spread human rights violations with causes traceable to its colonial roots. In an effort to break with years of the repression, stratification and exploitation of the colonial and post-colonial regimes, Guatemala elected populists presidents in the two elections following World War II. Dr. Juan José Arévalo and his successor Colonel Jacobo Arbenz Guzman embraced land reform and encouraged broader political participation. However, in 1954, when President Arbenz's reform efforts were perceived as harming U.S. interests, the Central Intelligence Agency helped Colonel Carlos Castillo Armas overthrow Arbenz. In

order to consolidate power and reverse the political opening of the Arévalo and Arbenz regimes, the Armas government strengthened the state security apparatus extending it to the rural areas. For more than 40 years this security apparatus has been brutally repressing opposition in whatever form it appeared – supporters of land reform, the labor movement and the rural insurgency. In 1978 when General Romeo Lucas Garcia became president he first targeted political opposition in the urban centers and later the labor movement and insurgency in the countryside. Then after taking power in a coup in 1982 General Efraín Ríos Montt launched a bloody scorched earth anti-insurgency campaign. Most of the male peasants were conscripted into civil patrols and tens of thousands of innocent Guatemalans and combatants were killed.⁵

In 1983 General Oscar Mejía Victores overthrew Ríos Montt and began a painstakingly slow process of democratization. However, this promising step did not coincide with the cessation of violence as the military continued its bloody anti-insurgency campaign. Despite a relatively successful democratic power transition in 1986 the civilian governments were unable to wrest meaningful authority from the military.⁶

Serrano Elias was elected president of Guatemala in 1990 defeating the National Center Party led by Jorge Carpio Nicolle. However, Serrano's legislative coalition dissolved in 1993 causing him to lose control of his legislative agenda. On May 25, 1993, Serrano executed a "self-coup" in which he dismissed congress, the Supreme Court, the Constitutional Court and the Procurator of Human Rights. He suspended fundamental liberties and took control of radio and television broadcasting.⁷ On June 1, 1993, the Guatemalan Constitutional Court declared Serrano's administration illegal and Serrano

fled to El Salvador amidst rising opposition. Five days later the Congress appointed the Procurator of Human Rights, Ramiro de Leon Carpio, Jorge Carpio Nicolle's cousin, President of Guatemala.⁸ Serrano's failed coup signaled the first albeit small step away from military dominance. President Alvaro Arzú was elected president in 1996 and the Guatemalan Peace Accords were signed that year.

Even with the Peace Accords and the transition to democratically elected civilian governments, Guatemalans continued to suffer brutal human rights violations. For example, when the war ended in 1996, the Peace Accords required Guatemala to reform its justice system. However, the United Nations agency established to monitor compliance with the peace accords (MINUGUA) reported continued impunity and the persistent lack of due process. In its 2000 Special Report, MINUGUA concluded that “[w]ith regard to the allegations of threats, harassment and intimidation of judges, the Special Rapporteur finds that these concerns are real [and that t]he Government ha[s] failed to provide the requisite protection or assistance to those who have complained.”⁹ In addition, “the large number of unsolved violent murders and the high incidence of impediments to investigations and prosecutions in these murders and human rights-related crimes . . . should give an indication of the very high rate of impunity.”¹⁰ The MINUGUA report in 2001 states that “[h]arassment and threats to justice operators continue to be of serious concern [and that] rather than declining, these incidents have actually increased.”¹¹ This report finds that “impunity is still widespread.”¹² In 2004, Óscar Berger was sworn in as Guatemala's latest president. President Berger emphasized improving Guatemala's human rights protections as a central feature of his campaign. As we discuss below, the Berger administration has taken some steps to fulfill that promise.

However, there are still monumental obstacles to improving human rights conditions and to achieving justice for human rights violations.

3. *The Role of Courts*

A. *Legal Accountability*

In the face of the legacy of catastrophic political violence, victims frequently look to the courts to reconstruct the rule of law and provide justice. According to many human rights activists and scholars, courts *must* act to consolidate democratic reform based upon the rule of law in post-conflict or post-authoritarian settings.¹³ As Fletcher and Weinstein argue, “Accountability provides a direct, moral, and ethical response to victims on behalf of society that demonstrates that the state is validating their innocence and their lack of culpability in the deeds.”¹⁴ By punishing those responsible, the state recognizes the suffering of the victims and issues a moral condemnation of the actions committed.¹⁵ As Jamie Mayerfeld writes, punishment “communicates society’s condemnation of [the] violation, and helps actual and potential aggressors to absorb the lesson that such violation is morally wrong.”¹⁶ Courts address the victims’ desire for retribution by punishing individual defendants and in so doing may also serve to protect against future violations.¹⁷ Mayerfeld argues that, “the obligation to deter constitutes the core rationale for punishing human rights violations.”¹⁸ Yet another scholar, Jennifer Widner, points out that by punishing violators, courts can provide a credible threat that future violations will be punished as well.¹⁹ In order to guarantee human rights in the present, past threats to punish must be carried out.²⁰

Indeed, according to Mayerfeld, effective judicial dispute resolution systems “encourage social reconciliation by modeling a fair procedure for the just disposition of

violent conflicts fueled by bitter political and ideological divisions.”²¹ Judicial action against human rights violators may also prevent future abuses by reestablishing norms such as respect for the rule of law and basic human rights.²² Ruti Teitel states that “[w]hen criminal justice denounces these crimes, such prosecutions have a systemic impact transcending the implicated individual . . . [and to] society, such trials express the normative value of equality under the law, a threshold value in the transformation to liberal democratic systems.”²³ Teitel also argues that “establishing knowledge of past actions committed under color of law and its public construction as wrongdoing is the necessary threshold to prospective normative uses of the criminal law.”²⁴ Martha Minow agrees with this assertion as she writes, “To respond to mass atrocity with legal prosecutions is to embrace the rule of law.”²⁵ Human rights trials, according to Minow, transform individual desires for vengeance to the state and this “transfer cools vengeance into retribution, slows judgment with procedure and interrupts, with documents, cross-examinations and the presumption of innocence, the vicious cycle of blame and feud.”²⁶

B. Judicial Independence and Accountability

Scholars and activists frequently urge judicial independence and reform in order to establish a domestic institution capable of holding government accountable to the rule of law.²⁷ The result, in theory, is an independent court system at home that can check tyranny from the other political institutions. Judicial independence can be defined as the extent to which the members of a court may adjudicate free from institutional controls, incentives, and impediments imposed by other political institutions or forces.²⁸ In *Federalist 78*, Alexander Hamilton states that “the courts were designed to be an

intermediate body between the people and the legislature, in order to, among other things, to keep the latter within the limits assigned to their authority.”²⁹ According to Hamilton, the independence of the judiciary operates as a "safeguard against the effects of occasional ill humors in the society.”³⁰ As Charles Epp states in his comparative study, “the judicial system’s structural independence . . . is widely recognized as a necessary condition for any significant judicial check on arbitrary power.”³¹

Independence would seem to be especially important if courts are to hold government officials accountable for past or on-going violations of human rights. In a comparison of the U.S. and Canadian high courts, Miller discovered the U.S. Supreme Court was more likely to challenge other branches because it possessed more autonomy than its Canadian counterpart.³² Comparative scholars have consistently recognized the importance of judicial independence in democratization, protecting individual rights and promoting the rule of law.³³ Dodson and Jackson linked the impotence of the judiciary directly to human rights violations in Guatemala and El Salvador.³⁴

Thomas Jefferson differed with Hamilton’s view of judicial independence, however, arguing that judges “should be submitted to some practical and impartial control.”³⁵ He observed that “[a]ll know the influence of interest on the mind of man, and how unconsciously his judgment is warped by that influence.”³⁶ Critics of absolute judicial autonomy “object to what they consider to be an inordinate and constitutionally unjustifiable grant of power to the branch of government which is least likely to accurately represent the genuine will of the people.”³⁷ For example, Mark Tushnet argues that granting judges independence encourages them to follow their political will and not necessarily their legal judgment.³⁸ Michael Collins points out that an

independent court “could itself engage in acts of constitutional usurpation that might be difficult to remedy.”³⁹

It is possible, then, that the traditional pillars of judicial independence could, in some circumstances, impede human rights accountability. Ratner and Abrams argue that, “Accountability cannot be isolated from the political dynamic in which competing factions within states seek to manipulate the past in order to justify both their prior activities and the current programs.”⁴⁰ In repressive states, judges abetting tyranny could continue to do so unencumbered by the constraints of democratic accountability. Independence can only free courts from unwanted influence, it cannot grant judges the will to confront decades of impunity, nor can it anoint them with the wisdom to overcome legislatively or constitutionally rooted opposition to accountability. Judges will, after all, always be bound to the political elite at least to some degree and as Ratner and Abrams articulate, “the most critical reason for the lack of prosecutions...is that serious violations of international human rights or humanitarian law are usually committed on behalf of or with the complicity of the state.”⁴¹ In addition to judicial ties to state actors, the barriers maintaining impunity include doctrines of sovereign immunity and amnesty laws, both of which are raised and maintained by the state.

In new and unstable democracies the prosecution of human rights cases can actually destabilize the democratic government and harm the cause of accountability. Ratner and Abrams point out that “if a nation’s leaders allow the prosecutions to become a pawn in the competition for power, the trials will lack credibility and damage the foundations of democracy.”⁴² These authors cite the Argentine experience, in which the prosecution of human rights cases motivated the military “to challenge the young and

insecure civilian government, thereby putting an end to the prosecutorial process.”

Similar dangers exist in Guatemala. On the other hand Ratner and Abrams recognize that “outside actors – states, international organizations, and NGOs – can often help strengthen regimes seeking accountability and defuse threats from the opponents of prosecutions.”⁴³

To summarize, judicial independence allows courts to provide some measure of accountability for human rights violations. However, because domestic courts are part of the state, they are constrained by state-constructed barriers. The level of accountability they can provide, therefore, is severely limited. To overcome these barriers and to reach greater levels of accountability victims must reach beyond the state. As I will demonstrate further below, doing so not only affords victims with a forum beyond state control, it can strengthen the independence of local judicial processes.

C. Deep Wounds and Shallow Justice – Domestic Prosecutions in the Carpio, Plan de Sanchez and Mack Cases

There is support for these assertions from the trenches of human rights litigation in Guatemala. In the spring of 1993, politician, reform activist and newspaper-owner Jorge Carpio Nicolle opposed the Serrano self-coup and the subsequent proposals to grant amnesty to those who orchestrated the coup. Within a month of this outspoken opposition, a state-sponsored civil patrol intercepted and murdered Carpio and several of his associates.⁴⁴ The families sought justice for the killings in Guatemala but Judge after judge refused to hear the case. Guatemalan trial and appellate courts twisted the law to block all efforts to hold accountable those responsible for the killings.⁴⁵ Throughout the more than ten years of investigation numerous crucial pieces of evidence have been lost,

mislabeled and otherwise destroyed.⁴⁶ Despite a report prepared by a chief prosecutor implicating 11 members of a civil defense patrol in the murders only four of these men were tried and only one was convicted of the crime. Moreover, this conviction came in 1996 after three years of dilatory tactics by the defense and by the trial courts. In an additional blow, the trial court refused to consider the role of the civil defense patrol and foreclosed any investigation of the intellectual authors of the attack. Then in 1998, in a shocking ruling, the Guatemalan Court of Appeals absolved Patzan of any responsibility for the murder and ordered his immediate release. The Court cited numerous evidentiary irregularities, including the broken chain of custody of the alleged murder weapon. The Guatemalan Supreme Court upheld this result and, while the investigation remains open, no notable progress has occurred since that time.⁴⁷

The result was an utter destruction of any belief in justice emanating from the democratizing state. As the wife of one of the victims, Silvia Villacorta, testified before the Inter-American Court, “Guatemala is a country of deep wounds and shallow justice”⁴⁸ The wife of Jorge Carpio, Mrs. Arrivillaga de Carpio, recounted the utter failure of the justice system in Guatemala and told the Inter-American Court that, as a result, she lived each day in fear.⁴⁹ “I felt unprotected,” she testified.⁵⁰

The state obstructed all efforts to pursue truth and justice in the *Plan de Sanchez* massacre case as well. During the period in which the massacre occurred, the military was terrorizing the Mayan peasant countryside as part of its scorched earth counterinsurgency campaign. These onslaughts came in the form of murders, violent intimidation, displacement and the destruction of houses, farms, and livestock. Thus, in the decade that followed the 1982 massacre the state was almost completely successful in

blocking attempts to investigate those responsible. One of the victims, Juan Manual Jeronimo, testified, “The first years after the massacre we didn’t do anything to seek justice because we were not even allowed to talk about what happened never mind what we wanted to do.”⁵¹ Finally, in 1993 victims represented by the Center for Human Rights Legal Action (CALDH) brought charges. After exhumations and an investigation began in 1994 the process quickly ran into state erected road blocks. Evidence, such as ammunition cartridges and ballistics reports disappeared and exhumations slowed to a stop. As one of the victims, Buenaventura Manuel Jerónimo, testified before the Inter-American Court:

After a long time, a report of the incident was filed by the Center for Human Rights Legal Action [In Guatemala]. Nevertheless, until today there has been neither justice nor any results of that process. The violence, the corruption, and the discrimination against the indigenous peoples and farmers impede justice. Until this day there are still threats against any judge involved in the case.”⁵²

On September 11, 1990, Myrna Mack Chang, an anthropologist studying the displacement of thousands of indigenous Guatemalans, was assassinated by members of a military death squad. Authorities originally informed Myrna Mack’s sister, Helen, that Myrna perished in an auto accident. Skeptical of the claim, Helen eventually discovered the true cause of her sister’s death – she had been stabbed 27 times outside her Guatemala City office. For Helen Mack, the path to justice has been an insufferable ordeal. The state actively blocked her efforts to hold those responsible for the murder accountable under Guatemalan law. As in the *Carpio* and *Plan de Sanchez* cases the mechanisms of impunity were first deployed during the initial investigation. Investigators neglected to

take fingerprints, photographs or blood samples from the crime scene. Although Myrna Mack's clothing and fingernail samples were initially retained, they were discarded before any laboratory analysis was conducted on them. A report drafted by investigators suggesting that Guatemalan security forces planned and carried out the murder was destroyed. When one of these investigators testified about this report he was assassinated.⁵³

In addition to legal and procedural obstructions those wishing to preserve impunity launched a violent campaign against anyone working on the *Mack* case. In April 1994 the president of Guatemala's Constitutional Court, Epaminondas González Dubón, was shot and killed. At the time of the murder the Court was considering several controversial human rights cases, including preliminary rulings on the Myrna Mack case.⁵⁴ Throughout the more than 10 years of judicial proceedings death threats have driven more than ten judges to drop the case. Several judges, prosecutors and witnesses have fled the country after receiving death threats. In July 1994, Helen Mack was forced to leave Guatemala after a plan to murder her was exposed. The next month Roberto Romero, a Myrna Mack Foundation lawyer, fled the country after assailants fired at him.⁵⁵ In an interview, an activist working in Guatemala reported that she has personal knowledge of judges and prosecutors who suffer "harassment, threats . . . in a lot of cases their families have been threatened, they're harassed, some of them have suffered attacks and some have suffered pressure from within the system."⁵⁶

D. The Need for International Court Involvement

Both Governmental agencies and Non-Governmental Organizations (NGOs) monitoring the judiciary in Guatemala during and after the war have unanimously found that Guatemala's courts not only failed to offer citizens adequate judicial remedies, but actually aided human rights violations and perpetrated impunity. For example, The Historical Clarification Commission for Guatemala concluded: "The justice system, non-existent in large areas of the country before the armed confrontation, was further weakened when the judicial branch submitted to the requirements of the dominant national security model." The Historical Clarification Commission went even further finding that:

. . . by tolerating or participating directly in impunity, which concealed the most fundamental violations of human rights, the judiciary became functionally inoperative with respect to its role of protecting the individual from the State, and lost all credibility as guarantor of an effective legal system. This allowed impunity to become one of the most important mechanisms for generating and maintaining a climate of terror.⁵⁷

Even after the Peace Accords were signed in 1996 justice was simply not available to human rights victims. Few cases were prosecuted and the intimidation of complainants, judges, prosecutors, and witnesses obstructed the judicial process. With the *Mack, Carpio* and *Plan de Sanchez* cases we see a fundamental justification for international courts. When a domestic system so completely fails in its duty to uphold the rule of law, it is incumbent on the international system to fill the void. According to Teitel, international human rights "jurisprudence evinces the clear delimiting of state power on the basis of individual rights norms."⁵⁸ Extra-national rulings against former

officials shatter the view that these officials are immune from prosecution and inspire local attempts to penetrate the shield of impunity. Prosecutions in international courts, therefore, can send a powerful message to the legal and human rights communities in post-conflict nations. Ratner and Abrams point out that international courts can “put pressure on governments comply with their international obligations (including their duties to prosecute offenders.”⁵⁹ They also recognize that these institutions can “establish an authoritative factual record” and “serve the cause of developing human rights and humanitarian law.”⁶⁰ Minow argues that when a crime against humanity is “prosecuted outside the affected territory, in the absence of regime change, it is perhaps the purest illustration of the potential of law to effect normative transition . . . [i]ndeed, the very response to the crime against humanity instantiates its core value of transcendent justice.”⁶¹ Extra-national convictions can aid local prosecutions by communicating legal strategies and even precedent through the embracing of a broad concept of international law. As Minow observes “[e]specially when framed in terms of universality, the language of rights and the vision of trials following their violation equip people to call for accountability even where it is not achievable.”⁶²

4. *Cases Before the IACHR*

A. *Introduction to the Inter-American System*

The Organization of American States (OAS) established the Inter-American Commission on Human Rights (Commission) in 1959 to monitor compliance with the American Declaration of the Rights and Duties of Man. Then in 1965 the OAS gave the Commission the power to hear individual human rights cases and recommend solutions.

In 1969 the OAS recast its human rights principles by passing the American Convention on Human Rights. The Convention not only sets out the basic human rights standards for member states but it establishes the Inter-American Court of Human Rights (IACHR). Of the 35 OAS member nations 24 have accepted the binding jurisdiction of the IACHR.⁶³ Guatemala signed the Inter-American Convention on Human Rights on May 25, 1978, and accepted the jurisdiction of the Court on March 9, 1987.

Under the Convention the primary functions of the Commission are to consider individual complaints and impose conciliatory remedies, to monitor human rights compliance in the region, to conduct on site studies of human rights conditions and to impose “precautionary measures” to prevent potential human rights violations. The Commission has frequently involved itself in Guatemala’s human rights affairs. For example after an on site visit in 2001, the Commission concluded that:

. . . profound systemic deficiencies continue to subvert justice, and have yet to be effectively addressed. These include serious problems in the systems and procedures for delivering justice, as well as the paralyzing effect of attempts to coerce those involved in the pursuit and administration of justice through threats and corruption. Given the central role of the judiciary in safeguarding all individual rights, the challenge of redressing these problems is both urgent and paramount.⁶⁴

To pursue a human rights claim in the Inter-American system victims must first file a complaint with the Commission. The Commission then seeks a response from the nation alleged to have committed the violation. Once a response is received the Commission must decide if the case is admissible – meaning within the Commission’s

jurisdiction. For the petition to be admissible it must allege violations of rights protected by one of the several instruments recognized by the OAS and it must demonstrate that the petitioners exhausted their domestic remedies.⁶⁵ The Commission can hear complaints against any member nation of the OAS.⁶⁶

If the Commission determines a case is admissible it considers evidence presented by each of the parties and frequently encourages a negotiated settlement. If negotiations fail the Commission issues a ruling on culpability. If it finds the nation culpable, it issues recommendations and prescribes remedies. These rulings are confidential at this stage and designed to encourage violating nations to comply with the mandated human rights instruments. If a nation fails to comply with the orders of the Commission, the Commission brings the case before the IACHR. Here the Commission prosecutes the case against the nation in question. Evidence is presented and a formal decision is issued by the court that contains a ruling on culpability as well as remedies if appropriate. The victims may be represented by counsel before the Commission and IACHR.

B. The Carpio Case

With all efforts to pursue justice at home blocked, Carpio's wife, Martha Arrivillaga de Carpio, and daughter-in-law, Karen Fischer, looked beyond Guatemala to the Inter-American Commission of Human Rights. With the help of the Human Rights Office of the Archbishop of Guatemala, the Center for Justice and International Law (CEJIL), Human Rights Watch and the International Human Rights Law Group, these women filed a petition with the Commission on July 12, 1994. Instead of pleading that they had exhausted local remedies the Carpio petitioners argued that the state actively

obstructed their attempts to seek justice domestically and that domestic remedies were therefore unobtainable.⁶⁷ The Commission agreed that justice in Guatemala had been completely obstructed by the state.

The Commission typically makes the decision on admissibility at the outset – as it did in the *Plan de Sanchez* case discussed below. However, if more information is needed to make the determination – as it was in the *Carpio* case – the Commission can reserve this decision until it has heard from the parties and considered the facts. At this early stage the Commission sets out to find a conciliatory solution by receiving evidence and negotiating with the parties. After doing so in the *Carpio* case, the Commission finally ruled that the case was admissible. It then ordered Guatemala to investigate the murders thoroughly in order to punish those responsible for planning and carrying out the attack.⁶⁸ The Commission's order also included provisions recommending reparations for the families of the victims.⁶⁹ On June 10, 2003, when Guatemala failed to reply within the time required, the Commission took the case to the Inter-American Court.⁷⁰ It alleged that Guatemala violated the victims' rights to life, personal integrity, judicial protection, freedom of expression, and the rights of the child under the Inter-American Convention. While the Commission prosecuted cases, recent changes in the IACHR's rules allow the victims and survivors to be represented by counsel at the proceedings as well. CEJIL represented the *Carpio* parties.⁷¹

As the *Carpio* hearing began on July 5 and 6, 2004, the president of the Guatemalan Presidential Commission of Human Rights announced that his government accepted Guatemala's international responsibility for the attack on *Carpio* and his associates.⁷² Guatemala acknowledged that Mr. *Carpio* was murdered to chill opposition

to the amnesty provisions. Because the state accepted responsibility, neither the Commission nor CEJIL were required to prove the elements of each of the alleged violations. However, CEJIL stressed the importance of allowing the victims and families to tell their stories in open court and the state voiced no opposition to allowing them to do so.⁷³

The Court ruled that the state, acting through para-militaries, murdered Carpio for political reasons and that it erected obstructions to justice resulting in “total impunity.”⁷⁴ It went beyond a simple judgment that Carpio’s rights were violated, and ruled that the rights of all those threatened and attacked in their pursuit of justice in the case were also violated.⁷⁵ The reparations assigned by the Court in both cases reflect a desire to extend beyond compensation and take steps to remedy conditions in Guatemala. For example, in addition to money damages totaling \$1,360,000 for the victims’ families, the Court ordered the state to enact concrete measures to prevent similar violations and continued impunity.⁷⁶

C. *The Plan de Sanchez Case*

Blocked by the same infrastructure of impunity in Guatemala, the victims of the Plan de Sanchez massacre filed their claim with the Inter-American Commission on May 11, 1999. As in the *Carpio* case, the petitioners argued and the Commission agreed that local remedies were unobtainable due to the wall of impunity erected by the state. CALDH represented the victims and families before the Commission and before the IACHR.

In August, 2000, President Alfonso Portillo admitted “institutional responsibility” for the Plan de Sanchez massacre during conciliation discussions between the state, the

petitioners, and the Commission.⁷⁷ On February 28, 2002, the Commission, after analyzing the positions of both sides, made a series of recommendations to the state including a demand that the state conduct an investigation to identify and sanction those responsible for the massacre.⁷⁸ The Commission also required Guatemala to pay both material and nonmaterial compensation to the survivors of the massacre and to take measures to ensure that such an atrocity would never recur. Despite Portillo's acceptance of responsibility, Guatemala failed to take the steps required by the Commission.⁷⁹

Therefore, the Commission presented the case before the IACHR on July 31, 2002. At this stage Commission lawyers took on new roles and prosecuted the case against the state before the Inter-American Court. They alleged that the state of Guatemala violated the rights to personal integrity, judicial protection, judicial guarantees, equality before the law, property and freedom of religion embodied in Articles 5, 8, 25, 24, 12, 21, and 1.1 of the American Convention of Human Rights.⁸⁰ In addition to prosecuting the rights of those killed and wounded during the attacks and the rights of those who suffered losses, the Commission alleged violations based on Guatemala's resistance to truth and justice in the case.

The *Plan de Sanchez* hearing took place before the IACHR in San Jose, Costa Rica, on April 23 and 24, 2004. In addition to depositions and affidavits, the Commission and CALDH called family members of those killed in the massacre and experts on the effects of the attack. After the Commission concluded its case, Guatemala announced that it was retracting its exceptions to the complaint and accepting full international responsibility for the massacre and subsequent violations.⁸¹ Doing so constituted complete acceptance of the Commission's complaint and an admission that Guatemala

committed the violations therein alleged. The Court accepted Guatemala's admissions and shifted the proceeding to the reparations phase.⁸²

The Inter-American Court of Human Rights ruled that the *Plan de Sanchez* victims were denied their rights to personal integrity, judicial protection, equality before the law, freedom of religion, property.⁸³ Moreover the state's efforts to preserve impunity after the massacre violated the petitioners' rights to judicial protection.⁸⁴ The Court awarded \$20,000 per beneficiary in pecuniary damages totaling almost \$7 million.⁸⁵ Moreover the Court ordered Guatemala to construct health care and mental health facilities in the Plan de Sanchez community as well as road, water and sewer systems.⁸⁶

C. *The Myrna Mack Case*

Immediately after Myrna Mack's murder Helen Mack approached the Inter-American Commission. On Helen's behalf the Guatemalan Human Rights Commission filed a complaint against Guatemala in the Commission on September 12, 1990. The Commission reserved its determination of admissibility while it observed the domestic process. However, on March 5, 1996, after seeing the ineffectiveness of the domestic proceedings, the Commission ruled that the *Mack* case was admissible. At a hearing before the Commission the state accepted institutional responsibility for the extra-judicial killing of Myrna Mack. This step facilitated a compromise agreement on the remedies to be prescribed. In this agreement, Guatemala promised to reinstate the domestic case against the alleged intellectual authors of the killing and to protect the integrity of those proceedings.⁸⁷

The Inter-American Commission sent a delegation to Guatemala to ensure the state complied with the agreement and in two separate reports the delegation found that Guatemala failed to do so. In light of these findings, on March 8, 2001, the Commission issued a decision finding Guatemala responsible for violating Myrna Mack's right to life, and Helen Mack's right to justice. It assessed damages and required Guatemala to investigate and prosecute those responsible for orchestrating the murder. In response Guatemala revoked its admission of institutional responsibility. The Commission ruled that Guatemala showed no indication that it would follow the Commission's recommendations and filed the case in the IACHR on July 26, 2001. Guatemala objected, arguing that neither the Commission nor the Court had jurisdiction because the domestic prosecution was ongoing. The IACHR agreed with the Commission's ruling that the domestic prosecution was a façade disrupted by obstructions orchestrated by the state.⁸⁸

The IACHR heard the Mack case from February 18 – 20, 2003. CEJIL represented the victims and along with the Commission they put on evidence of the state's responsibility for the murder, the repeated state efforts to obstruct the domestic proceedings and the tremendous toll Myrna Mack's death had upon the lives of her family members. Myrna Mack's daughter, who was 16 years old when her mother was killed, testified that she "thinks of her mother every day, especially of the way she was murdered, of the pain of the 27 knife wounds she suffered, and of how she must have felt lying alone on the street."⁸⁹

On November 25, 2003, the Court issued its judgment in which it ruled that the Presidential General Staff had ordered Guatemalan security forces to murder Myrna Mack and that this murder violated the right to life protected in the American

Convention.⁹⁰ The IACHR ruled that the murder was planned and executed for political purposes as part of campaign to silence those who would expose Guatemalan human rights violations.⁹¹ The Court also found that Guatemala had denied the Mack family the right to justice by covering up the crime and obstructing the judicial process through legal and violent means.⁹² Finally, the Court ruled that Guatemala violated the Mack family's rights to humane treatment by committing the murder and by using threats and coercion to impede the family's attempts to pursue justice.⁹³ In addition to more than \$600,000 in pecuniary damages divide among three family members, the Court required Guatemala to remove all obstacles to the domestic prosecution, to name a street after Myrna Mack and to create a permanent anthropology scholarship in Myrna Mack's name.

These three cases present a typical formula for Guatemala. In each the state orchestrated a brutal human rights violation. In each the state deployed a multifaceted campaign to cover up the crime and obstruct all efforts to attain justice. And in each the litigants reached beyond the state, to the Inter-American Court, to escape the Guatemalan formula of injustice.

4. *The IACHR and Human Rights Accountability*

A. *The Function of the IACHR*

In their study of international courts, Posner and Yoo argue that the IACHR is ineffective because it hears few cases and compliance rates are low.⁹⁴ In their effort to compare a wide variety of international courts, these authors necessarily simplify their criteria for effectiveness by concentrating on the number of cases heard and the rate of compliance. This assessment may not fully reflect the effectiveness of an institution like the IACHR. For example, when comparing the IACHR to the European Court of Human

Rights (ECHR), Posner and Yoo find the IACHR to be less effective. However, these institutions are in completely different political universes, serving radically different purposes. The ECHR is the pinnacle tribunal created and supported by predominantly established democracies. While it considers cases from transitional democracies, some of which are dealing with political violence, most of its rulings address nonviolent violations. The ECHR, and European courts in general, have comparatively high levels of legitimacy.⁹⁵ Importantly, the European Union provides significant material incentives to submit to and comply with the authority of the ECHR. In this environment the goal of the ECHR is to constrain member states under the conventions – member states which for the most part have established records of compliance with the rule of law. On the other hand, the IACHR is an institution striving to solidify its institutional legitimacy in a sea of new and developing democracies. Many of these democracies are experiencing or emerging from drastic political violence. The cases before the IACHR often arise from the political violence that preceded democratization or that is part of the transition struggle. The purpose and setting of the IACHR is fundamentally different, therefore, than that of the ECHR.

In this piece we focus our assessment on whether the IACHR improves human rights conditions in the Americas, concentrating on one of the toughest challenges - Guatemala. Drawing from the scholarship discussed above we identify four purposes of an international court that hears human rights cases from post-conflict democracies. (See Table 1). First, it should operate to deter future violations with rulings that “equip people to call for accountability.”⁹⁶ Second, it should facilitate the legal and moral condemnation of human rights violations.⁹⁷ Third, its jurisprudence should transcend the

parties in the case in order to express the normative value of justice and equality under the law to broad classes of victims.⁹⁸ Fourth, it should establish “knowledge of past actions committed under color of law” and create a historical record.⁹⁹ An overview of the IACHR’s jurisprudence demonstrates that, given the tribunal’s authority and resources, it has had some success.

[TABLE 1 HERE]

B. Facilitating Accountability – Equipping Victims to Seek Justice

There are numerous examples of the IACHR overriding state efforts to erect institutional barriers to human rights accountability. In 2001, the IACHR ruled that Peruvian amnesty laws protecting military personnel from prosecution for a 1991 massacre violated the American Convention on Human Rights.¹⁰⁰ After this decision the Peruvian government filed charges against security forces allegedly responsible for this and other human rights crimes.¹⁰¹ In 1999, the IACHR ruled that El Salvador was responsible for the 1989 murder of six Jesuit priests and two others. In doing so, the Court struck down El Salvador’s amnesty law, holding that the state had unlawfully denied citizens’ the right to justice by granting amnesty to those convicted for the murder.¹⁰² Pursuant to IACHR decisions, Chilean courts ruled that a 1978 amnesty law could not supersede international law. Because Chile had signed the Inter-American treaties prohibiting torture and other human rights violations, the amnesty law as applied to these crimes violated Chile’s international obligations.¹⁰³ By circumventing these barriers to accountability, the IACHR equips litigants with the legal tools to pursue justice domestically. These rulings poke holes in the wall of impunity erected by the state.

The most illustrative example of this phenomenon in Guatemala may be the *Myrna Mack* case – as the IACHR revived the case on at least two occasions. After Myrna Mack was killed by security forces, prosecutors and the Myrna Mack Foundation tried for more than ten years to convict the intellectual authors of the attack. Guatemala had an interest in keeping the domestic case going in order to argue that domestic remedies had not been exhausted and that the Commission case was inadmissible. Then in March, 2000, faced with an imminent IACHR trial, the government offered to take responsibility for the murder. The stalled domestic trial of the senior officers accused in the case suddenly resumed and, armed with IACHR rulings, prosecutors won guilty verdicts against two officers who planned the murder. In another set-back, however, these verdicts were overturned on appeal. Once again the IACHR stepped in. In December, 2003, the IACHR unanimously ruled that Guatemala had violated the right to life and the right to judicial guarantees and protection. The tribunal ordered Guatemala to, among other things, “remove all obstacles to justice in the case.”¹⁰⁴ Just one month later the Guatemalan Supreme Court reinstated the guilty verdicts against the officers who orchestrated Myrna Mack’s murder.

It is clear from the Guatemala cases that the IACHR sees its role as a mechanism to circumvent the systemic impunity in oppressive nations. Throughout the *Carpio* trial IACHR judges asked witnesses and counsel what the Court could order to remedy impunity, to push human rights cases through the Guatemalan courts and to prevent future judicial stonewalling.¹⁰⁵ For example, Judge Garcia Sayan asked several witnesses “what ingredients might be necessary to conduct an effective investigation” in the *Carpio*

case and in similar cases. Judge Jackman asked the lawyers in the case, “What formal steps are needed to reopen the [*Carpio*] case on Guatemala?”¹⁰⁶

Another way the IACHR helps advocates seek accountability is through the publicity accompanying international cases. Human rights NGOs use the Inter-American process to call attention to the mechanisms fostering impunity domestically. The Washington Office for Latin America (WOLA) worked with the lawyers in the *Mack* case to conduct a public relations campaign so that the case would have a significant impact in Guatemala and globally. As Adrianna Beltran, the head of this campaign, stated in an interview, “we used the *Mack* case as a way of highlighting the inefficiencies of the judicial system.”¹⁰⁷ The purpose of the media campaign, according to Ms. Beltran, was to “illustrat[e] the impunity that the military enjoyed, the weaknesses and the failures of the judicial system, the human rights situation and the fact that so many witnesses, lawyers, judges were being threatened, harassed, murdered.”¹⁰⁸ Based on the IACHR case, this group orchestrated a campaign to use the case to bring pressure to bear on Guatemala from members of the U.S. government. Ms. Beltran recalled that: “if the [domestic] case was stalling – or if security was necessary – we would organize a campaign involving ‘dear colleague’ letters or remarks on the floor, [we] would then circulate it to U.S. and International media.”¹⁰⁹

As Pasqualucci (2003) observes, the Inter-American Court has liberally settled several controversial questions of international human rights law thereby giving advocates legal tools in their campaign for accountability.¹¹⁰ For example, the Court rejects the contention that rights are “culturally relative” and instead holds them to be universal.¹¹¹ The IACHR fundamentally altered rights jurisprudence in the region when

it held that human rights law was part of international law but that unlike traditional international law, it did not merely grant rights to states.¹¹² Moreover, early in its history, the IACHR held that international law obligated states and granted to individuals the authority to hold states to compliance.¹¹³ In doing so, the Court struck down state efforts to circumvent this obligation. According to Pasqualucci, the Court allowed fundamental human rights to develop and expand over time. Instead of interpreting rights as they existed when the Court was established, it considered rights within the legal framework at the time of interpretation.¹¹⁴ Another crucial element of the Court's jurisprudence, according to Pasqualucci, is that it has held that certain fundamental human rights are non-derogable, even in times of emergency. The Court has refused to allow states to reserve recognition of these fundamental rights.¹¹⁵

A CEJIL lawyer, Roxanna Altholz, observed in an interview that the Court is increasingly recognizing impunity and failure to provide justice as distinct human rights violations. Its remedies in the Guatemalan cases are direct attempts to address these violations. IACHR rulings have mandated new and revived prosecutions, and even the reinterpretation of amnesty and limitations laws. Along these lines, Ratner and Abrams note generally that "Certain trends in the international legal process suggest these somewhat vaguely worded provisions are evolving into obligations by states to take specific action against offenders."¹¹⁶ According to these scholars, "Among the most significant developments" moving this trend, "was a 1988 decision of the Inter-American Court of Human Rights, which interpreted the American Convention of Human Rights to require states to investigate seriously, identify and punish offenders as well as compensate victims."¹¹⁷

The Court also equips victims to seek justice by protecting their safety while they are in litigation. This occurs directly and indirectly. In the direct approach, litigants can ask the IACHR for “provisional measures” if they believe they are in danger or that witnesses are being threatened.¹¹⁸ The Court will often issue these “provisional measures” ordering, for example, the state to provide armed security to litigants. The indirect element of safety that comes from litigating before the IACHR arises as a result of the publicity surrounding these cases. Defendants are less likely to attack or threaten a litigant if they are known internationally. NGOs working within the system foster this. Adrianna Beltran, an activist with WOLA coordinated the public relations effort during the *Mack* case. In an interview, she explained that “when [the Mack family’s] lawyer was receiving a number of threats - right before the case actually went to trial – [Helen] called me and said we’re receiving threats and everybody was on the phone with the state department, with the embassy, with members of congress or their staff, saying please call and tell them that you’re really concerned.”¹¹⁹ In this effort, Ms. Beltran observed, “we were sending the message that she was not alone.”¹²⁰

C. Condemning Human Rights Violations

For more than 20 years Guatemala blocked all attempts to punish those responsible for the Plan de Sanchez massacre of 268 Mayan Guatemalans (see above). Then in 2004, the IACHR ruled that Guatemala was responsible not only for the massacre but for denying justice to the victims and families for these many years. In addition to financial compensation, Guatemala was ordered to conduct a public apology. On July 18, 2005, exactly 23 years after the massacre, Guatemalan Vice President

Eduardo Stein traveled to Plan de Sanchez to formally apologize for the killings before the families and survivors of the victims. In his remarks, Stein conceded that the army had “unleashed bloodshed and fire to wipe out an entire community.”¹²¹ He observed that the “people want moments that commemorate their victims, but more than anything, they don't want what happened to keep being denied officially.”¹²²

The IACHR recognizes the significance of its rulings as the sole voice of justice after years of impunity. In its judgments, therefore, the IACHR goes beyond traditional reparations and includes provisions to amplify the impact of its decisions. Often this takes the form of a mandated, public apology such as the event described above. In one of his first official acts as President, Oscar Berger publicly apologized for the murder of Myrna Mack pursuant to an IACHR demand. President Berger apologized to Myrna Mack's sister and daughter and to the Guatemalan people in a ceremony broadcast on national television and held in front of the military and other dignitaries.

As the IACHR hearing began in the *Carpio* case, the president of the Guatemalan Human Rights Commission asked to address the Court. He stood, faced the families of the victims, admitted that the state was responsible for the murder of Carpio and his associates, and asked for forgiveness. When each family member testified, counsel for the state opened his remarks by apologizing for the state's actions.¹²³ Soraya Long, the CEJIL lawyer representing the families, commented in an interview that “It is extremely important that the state has recognized its responsibility – this is a very significant step – it is a very important gesture that the state asked for pardon from the victims.”¹²⁴ Ms. Long explained “For more than ten years the families of the victims have said the murder

of my husband, my father, was political – and the state said no, no ... and now finally they have said you were right, you were right.”

D. Addressing a Broad Class of Victims with Individual Cases

A primary critique of the IACHR levied by Posner and Yoo is that the Court resolves very few cases. While this critique certainly has merit and the IACHR would have a broader effect if it decided more cases, it is a somewhat misleading measure by which to assess this Court. The IACHR must, after all, preserve its precarious legitimacy in a political sea with currents often hostile to judicial review. If the IACHR were to review large numbers of human rights cases, while many national judiciaries in the region are struggling, support for the institution would almost certainly be withdrawn. Instead the IACHR, and the parties that litigate in the Inter-American system, seek to make the most of the limited resources available to them. For the most part litigants pursue, and the Court decides, cases that reflect a widespread human rights violation or that have symbolic importance to the nation and region.

NGOs operating in the Inter-American system seek out cases and victims whose injuries reflect wounds carried by a broader class of victims. CEJIL represents the victims and survivors in most cases heard before the IACHR. Roxanna Altholz, the CEJIL lawyer who served as lead counsel in the *Myrna Mack* case, explained that the organization seeks cases that are “emblematic of a wider set of violations.”¹²⁵ And certainly the *Myrna Mack* case carried this weight. When Myrna Mack was murdered, on September 11, 1990, she was studying the displacement of thousands of indigenous Guatemalans. As an anthropologist with international notoriety, Mack’s findings were

embarrassing to those in power, many of whom were complicit in the disappearances. The case, therefore, is symbolic of several of the deepest wounds inflicted during the 30-year civil war. Because of Myrna Mack's work, the case symbolized the effort to reveal the truth about the thousands of Mayan Guatemalans killed during the war. Also, because the state made every effort to block justice in the case, the result was a victory over the rampant impunity plaguing Guatemala. Myrna Mack's sister Helen testified before the IACHR that the "case is a paradigmatic one not only for her family but also for many Guatemalans who see themselves reflected in it" and that by litigating it she was "representing, with dignity, the thousands of victims who had no chance."¹²⁶

The *Plan de Sanchez* case clearly had these broad implications. During the civil war the Guatemalan military and civil patrols frequently attacked Mayan villages – murdering and disappearing thousands of indigenous Guatemalans. The Plan de Sanchez massacre, therefore, represented one of the most common and most horrific practices of the repressive regimes. As one of the victims testified before the IACHR, "During the 15 years after the death of our loved ones, there has been repression on the part of the authorities in the area – they try to stop us from performing our cultural practices and or from celebrating our religious ceremonies."¹²⁷ Representatives and victims have been attempting to hold accountable the powerful figures responsible for these killings for more than twenty years.

Similar cases benefit from the *Plan de Sanchez* IACHR litigation. For example the *Tuluché* massacre case involves indigenous villagers who were also labeled as subversives during the civil war and were extra-judicially executed. Attempts to hold accountable those who planned and participated in the massacre were repeatedly blocked

by the infrastructure of impunity entrenched in the Guatemalan judicial system.¹²⁸ Much like *Plan de Sanchez*, the *Tuluché* case in Guatemala was plagued by death threats, the dismissal of important evidence, as well as arbitrary acquittals of those accused. The results of the *Plan de Sanchez* case in the IACHR, and other cases like it, have the ability to bring justice for Mayans by creating a domino effect of legal accountability for thousands accused of similar human rights violations in Guatemala.

As discussed above the Court required public apologies not only to the victims and their families but to the affected communities and the Guatemalan people. In the *Plan de Sanchez* case the Court further demonstrated the importance of public recognition in that it ordered the state to publicize key sections of the Court's judgments in its official gazette and in a major national newspaper in both Spanish language and Achi Maya.¹²⁹ The Court ordered the state to enact efforts to support the growth and welfare of the Maya in the Plan de Sanchez Municipality with measures to promote the Achi Maya language and Culture.¹³⁰

The *Carpio* case had similarly broad implications. Jorge Carpio Nicolle was murdered because of his opposition to an amnesty provision that would have prevented legal accountability for thousands accused of human rights violations. He was a reform activist and a journalist who frequently spoke out against the Guatemalan military state and efforts to preserve impunity. His wife, Martha Arrivillaga de Carpio, testified during the trial before the IACHR that the Carpio case was “emblematic of the injustice in Guatemala.”¹³¹

Indeed it was clear that the IACHR realized these implications in handling these cases. Instead of merely awarding reparations the Court frequently requires the state take

concrete steps to address the broad class of victims not included in the case. It sets out to attack broad problems through individual cases. CEJIL lawyer, Soraya Long, argued in an interview that “the court uses its judgments to break systemic and structural failings and solve the macro problems” facing nations under its jurisdiction.¹³²

In the *Carpio* case, the Court also assessed remedies designed to address weaknesses in Guatemala. For example, in addition to traditional compensatory damages, the Court ordered the state to take concrete steps to prevent similar violations.¹³³ In its ruling, the Court targeted the widespread, systematic impunity ordering a full investigation to identify and punish those responsible for planning and carrying out the attack and the subsequent obstruction of justice.¹³⁴ For example, the Court ordered the state to remove all “obstacles and mechanisms ... that maintain impunity” and to provide security for all witnesses, judges and prosecutors.¹³⁵ According to the order all information discovered in the investigation must be made public because the victims, their families and the Guatemalan people, the Court stressed, have “a right to the truth.”¹³⁶ The Court stretched its authority even further and ruled that to the extent legislation may have granted the attackers amnesty, it is invalid because such laws violate the victims’ rights to justice and the truth.¹³⁷

E. Creating an Historical Record

Recognizing the victims’ story and enshrining it in the judicial record are essential parts of achieving justice for human rights violations.¹³⁸ In these cases, the state denied responsibility and obstructed any effort to find the truth. To the victims, therefore, the official recognition of the truth is invaluable. In its judgment in the *Myrna Mack* case the

IACHR ordered Guatemala to publicize a full account of its violations because “This right to the truth ... constitutes an important means of reparation.”¹³⁹

When the *Myrna Mack* case reached the IACHR, Guatemala offered to accept responsibility for the killing but the state was not willing to allow witnesses to testify.¹⁴⁰ CEJIL’s Roxanna Alholz, the lead counsel representing the Mack family, opposed Guatemala’s offer. In an interview Ms. Alholz stated that they refused Guatemala’s offer because “we didn’t want a sentence that just recognized responsibility and went on to reparations.”¹⁴¹ She pointed out that “we wanted, and it was very important for [Myrna Mack’s sister] Helen, to have all these pages of *hechos probados* [proven facts].”¹⁴² More than that, Ms. Alholz stated, “what was so important for us was to have the *hechos probados* include an indication that the state security forces were responsible – that was fundamental for us.”¹⁴³ Not only did the IACHR include in its decision an exhaustive account of these *hechos probados* but it ordered Guatemala to publish them in the “official gazette” and another daily newspaper with national circulation.¹⁴⁴ In all its cases CEJIL stresses the importance of allowing the victims and families to tell their stories in open court. Roxanna Alholz pointed out that allowing victims an opportunity to create a historical record and to express their suffering is an essential element of seeking justice. She stated that, “the more you can let the victims’ voices come through the better your litigation is – the legal theories ring truer, your case is stronger.”¹⁴⁵

This interest can be seen in the *Carpio* case as well. Even after Guatemala accepted responsibility for the violations, CEJIL lawyers encouraged their witnesses – the families of the victims – to testify extensively on their experiences, their suffering, and their loss. CEJIL lawyers asked the court to “establish that the attack was a politically

motivated execution.”¹⁴⁶ They asked the court to set out an official version of the truth by determining the specific acts and omissions that amounted to violations of the Convention and by assigning institutional responsibility.¹⁴⁷ The representative of the state did not object to allowing this testimony, “recognize[ing] the right of the victims to testify and tell their truth.”¹⁴⁸ The victims’ counsel, Soraya Long, pointed out in an interview that for “the Carpio family ... it was very significant to come here to [the Inter-American Court] because with the internal proceeding they felt thwarted... and to come to this court and say what occurred, to establish a record and to demonstrate that they had overcome.”¹⁴⁹

Never has the importance of creating an historical record been more evident than in the *Plan de Sanchez* case. The IACHR recognized the injury inflicted by the state’s repeated denials and obstruction. It held that “the impunity in this case keeps the memory of these acts fresh and impedes social reconciliation.”¹⁵⁰ An expert on the rights of indigenous peoples, Augusto Willemsen-Diaz, testified that “[t]o end the discrimination and racism of the indigenous people in Guatemala I recommend that the most important things are the acknowledgment of what occurred and that the people take notice of the enormous amount of abuses that have occurred.”¹⁵¹ The anguish in the victims’ stories was memorialized in the Court’s opinion. In the testimony of a family member, Juan Manuel Jerónimo he says “the following day the bodies of our loved ones were still decomposing when the military commissioners from Chipuerta arrived... They did the most savage of burials and we were no longer able to recognize our relatives.”¹⁵² The decision also included testimony regarding the impunity entrenched in the Guatemalan legal system. Another family member, Buenaventura Manuel Jerónimo,

stated that “the violence, the corruption, and the discrimination against the Indigenous peoples and farmers impeded justice.” He continued, “Until this day there are threats against the judges” who hear these cases against the state.”¹⁵³ Through this testimony in front of the IACHR Guatemala’s violent past and present were finally given a voice.

The IACHR is effective in setting out these histories. In its decisions the *hechos probados* sections are extensive memorializing the victims’ stories, the violations and the impunity. For example, in the *Carpio* case, the IACHR including an account of Mr. Carpio’s work for Guatemalan democracy through his government service, political activism and leadership of the newspaper “El Grafico.”¹⁵⁴ CEJIL’s Soraya Long stressed the importance of establishing a historical record. She commented in an interview that “Carpio’s work exists in the fabric of Guatemala – in acts of the assembly, in articles of the constitution – his family demands that their father – their husband – be included in the history of his country.”¹⁵⁵

5. *Conclusions – Impact of the Inter-American Court*

Our analysis demonstrates that the Inter-American Court is a valuable factor promoting human rights accountability and reconciliation in Latin America. (See Table 1). It is a powerful voice of accountability in a region struggling to fully democratize. By holding states accountable it demonstrates to citizens that overcoming impunity is possible. The Court’s jurisprudence thus, to use Teitel’s language, “evinces the clear delimiting of state power on the basis of individual rights norms.”¹⁵⁶ Lawyers, judges and activists then seek human rights protections in domestic institutions armed with the principles of law established by the Court. This positive impact is accentuated when the

activists pursue, and the Court hears, cases that are emblematic of broader human rights problems. Finally, in each case the Court enshrines the victims' stories of suffering into an historical record. After years of official denial, the Inter-American Court represents an official acceptance of the truth.

There are several critiques that may be levied at the Inter-American system. Posner and Yoo correctly point out that the IACHR hears very few cases and that compliance rates are questionable.¹⁵⁷ Rescia and Seitles argue that the delay in processing cases, along with procedural deficiencies and normative problems, are significant failings of the system.¹⁵⁸ One can see support for this in the *Carpio* case – which was filed in 1994 and resolved in 2004. Indeed these critiques have some merit and this essay is not intended to refute them. On the contrary, we conclude that even with these weaknesses the IACHR is still indispensable in aiding reconciliation and democratization for the post-conflict democracies in Latin America. The system would be even more effective if it addressed many of the concerns voiced by critics.

In post-conflict democracies, domestic courts struggle for legitimacy, resources and a meaningful role in their state's political discourse. However, as arms of the state they often share the state's interest in quieting efforts to uncover past atrocities. Moreover, they are frequently subject to influence from the other political powers.¹⁵⁹ When litigants are able to reach beyond the state for justice, they escape this institutional deck heavily stacked against them.

Human rights observers often note the effect of the IACHR's work. For example, in its 2005 Report, Human Rights Watch observed that the "Inter-American human rights system has provided an important venue for human rights advocates seeking to press the

state to accept responsibility for abuses.”¹⁶⁰ Similarly, after the *Carpio, Mack* and *Plan de Sanchez* cases, Amnesty International recognized that, although Guatemala is still suffering serious human rights violations, it has achieved “minor progress in trying past cases of genocide or crimes against humanity.”¹⁶¹ Moreover, Amnesty International pointed out that after these cases the Berger administration “took some positive measures including modernization of the army and establishing a National Reparations Commission.”¹⁶² Similar effects can be seen in other nations appearing before the Court. For example, Helio Bicudo credits the Court’s rulings with helping Peru restore democracy and the integrity of its judiciary after President Fujimori’s attempt to circumvent constitutional constraints.¹⁶³

During the *Carpio* hearing, Silvia Villacorta, the wife of one of the victims, told the Court that “in Guatemala there is no justice so we must look to international justice.” “We want,” she told the judges, “a precedent that future generations can look to.”¹⁶⁴ While the institutions and procedures of the Inter-American Court need strengthening, it is a positive – and necessary – force for human rights accountability on the region. It offers victims like Silvia Villacorta the justice she deserved.

Table 1 Standard for Assessing the Inter-American Court of Human Rights

<i>Purpose of International Court</i>	<i>Source</i>	<i>Contribution of the Inter-American Court of Human Rights</i>
Facilitating Accountability – Equipping Victims to Seek Justice	Minow Roht-Arriaza	<ul style="list-style-type: none"> • Circumventing institutional barriers to accountability • Innovating international human rights law • Protecting litigants, victims and witnesses
Condemning Human Rights Violations	Minow Mayerfeld Widner Roht-Arriaza	<ul style="list-style-type: none"> • Holding states accountable for violations • Communicating societal condemnation of the violations. • Upholding the rule of law
Addressing a Broad Class of Victims with Individual Cases	Teitel Minow	<ul style="list-style-type: none"> • Hearing cases that are emblematic of widespread violations. • Tailoring remedies to address systemic problems • Issuing sanctions to aid broad class of victims
Establishing an Historical Record	Teitel Minow Ratner and Abrams	<ul style="list-style-type: none"> • Allowing victims to testify often for the first time • Recording events based on evidence • Overcoming state denials and obfuscations • Enshrining the truth in the Court’s judgments

Endnotes

- ¹ Guatemala Human Rights Commission, 2004, “Ruling Against Government in Plan de Sanchez Massacre.” *Guatemala Human Rights Update*. 16(4): December 15.
- ² Carpio v. Guatemala, Judgment of November 21, 2004, Inter-Am. Ct.H.R. (Ser. C) No. 117; Mack Chang v. Guatemala, Judgment of November 25, 2003, Inter-Am. Ct.H.R. (Ser. C) No. 101 (2003); Plan de Sanchez v. Guatemala, Judgment of April 29, 2004, Inter-Am. Ct.H.R. (Ser. C) No. 105 (2004).
- ³ Amnesty International (1995 - 2005) “Annual Report – Colombia”; U.S. Department of State. (1995 - 2004). “Country Report on Human Rights Practices – El Salvador.”
- ⁴ All transcriptions and translations from interviews and from the Carpio hearing were conducted by the authors.
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- ⁶ Id.
- ⁷ Carpio v. Guatemala, Judgment of November 21, 2004, Inter-Am. Ct.H.R. (Ser. C) No. 117, paras. 76.9-76.10 (2004).
- ⁸ Id. at paras. 76.11-76.14, 76.16.
- ⁹ MINUGUA Special Report 2000 at 30.
<http://www.minugua.guate.net/Informes/OTROS%20INF/Informe%20del%20Sr%20Cumaraswamy%201.pdf>
- ¹⁰ Id. at 31.
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